

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EL PASO COUNTY, TEXAS; BORDER
NETWORK FOR HUMAN RIGHTS,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States of America, *et al.*

Defendants.

Case No. EP-19-CV-66-DB

**NOTICE OF DECISION BY THE DEPARTMENT OF DEFENSE TO AUTHORIZE
ADDITIONAL BORDER BARRIER PROJECTS PURSUANT TO 10 U.S.C. § 284**

Defendants hereby notify the Court and parties in the above-captioned cases that the Secretary of Defense has authorized three additional border barrier projects in Arizona and California pursuant to 10 U.S.C. § 284.

In the course of executing the contracts for the previously-approved Section 284 projects that have been the subject of litigation in this case, the U.S. Army Corps of Engineers (USACE) determined that that lower-than-expected contract costs may yield sufficient savings to build up to an additional 20 miles of border barrier. *See* Fourth Declaration of Kenneth Rapuano ¶ 4 (Exhibit 1). Specifically, USACE anticipates that the final total contract price for the projects will be less than USACE's rough-order-of-magnitude budget estimates. *Id.* USACE will not know the precise amount available until later in the fiscal year when USACE finalizes all contract pricing. *Id.*

The surplus funds were previously transferred into the "Drug Interdiction and Counter-Drug Activities, Defense" appropriations account pursuant to Sections 8005 and 9002 of the Department of Defense Appropriations Act, 2019, Pub. L. No. 115-245, div. A, tit. VIII, 132 Stat.

2981 (2018), which resulted in litigation over § 284 that led to the Supreme Court’s stay of an injunction in a related case. *See Trump v. Sierra Club*, 2019 WL 3369425 (S. Ct. July 26, 2019).

As a result of this anticipated surplus of funds, on August 16, 2019, the Department of Homeland Security (DHS) sent the Department of Defense (DoD) an amendment to DHS’s February 25, 2019, request for assistance under Section 284. *See* Fourth Rapuano Decl. ¶ 5 & Exhibit A. The amendment added mileage as well as new projects to the list of DHS-requested border-barrier-construction projects. *Id.*

On August 26, 2019, the Secretary of Defense authorized USACE to undertake three additional border barrier projects using excess funds obtained from contract savings on previously approved Section 284 projects, as those funds allow: Yuma Sector Projects 4 and 5, and Tucson Sector Project 4. *Id.* ¶ 6 & Exhibit A. Yuma Sector Project 4 and Tucson Sector Project 4 are located in Arizona. *Id.*, Exhibit A. Yuma Sector Project 5 consists of three separate segments, one located in Arizona (1.6 miles) and two in California (0.4 and 0.5 miles, respectively). *Id.*, Exhibit A.

USACE anticipates that it will award contracts and fully obligate the necessary funds for these three projects no later than September 30, 2019, but no earlier than September 15, 2019. *See* Declaration of Jill Stiglich ¶ 4 (Exhibit 2). USACE does not expect to begin construction, or to engage in any ground disturbing activities, on the projects before October 1, 2019. *Id.*

Dated: August 27, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Michael J. Gerardi
Michael J. Gerardi